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March 10, 2000

VIA COURIER

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals - TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte: Petition for Reconsideration and/or Clarification of FCC's First
Report and Order (CC Docket No. 98-147)

Dear Ms. Salas:

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's rules, 47 C.F.R. Sections 1.1206(b)(1) and (2), I am providing this notice of an oral and written *ex parte* presentation in the above-captioned matter. On March 9, 2000, myself and Colleen Dale, Senior Counsel of BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc., met with Commissioner Furchgott-Roth, Rebecca Beynon, Jordan Goldstein, Kyle Dixon, and Sarah Whitesell to discuss issues in the above-captioned proceeding. We presented the views contained in the attached document that was provided to Commissioner Furchgott-Roth, Ms. Beynon, Mr. Goldstein, Mr. Dixon, and Ms. Whitesell.

Two (2) copies of the filing are enclosed. Please date stamp the enclosed extra copy of this filing and return it in the envelope enclosed herein. Should you have any questions regarding this matter, please do not hesitate to contact us.

Sincerely,



Kevin D. Minsky

Counsel for BroadSpan Communications, Inc.
d/b/a Primary Network Communications, Inc.

Enclosures

cc: Commissioner Furchgott-Roth
Rebecca Beynon (Commissioner Furchgott-Roth's Office)
Jordan Goldstein (Commissioner Ness' Office)
Kyle Dixon (Commissioner Powell's Office)
Sarah Whitesell (Commissioner Tristiani's Office)
Colleen Dale (BroadSpan)

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**EX PARTE MEETING OF BROADSPAN COMMUNICATIONS, INC.
D/B/A PRIMARY NETWORK COMMUNICATIONS, INC.
REGARDING RECONSIDERATION AND/OR CLARIFICATION OF THE
COMMISSION'S FIRST REPORT AND ORDER IN CC DOCKET NO. 98-147¹**

March 9, 2000

I. Summary of the Company's Recommended Changes to the Commission's Collocation Rules

- 1) The Commission should amend its rules, 47 C.F.R. § 51.323(h), to permit CLECs to cross-connect to other collocated carriers at the ILECs' main distribution frames.
- 2) In order to ensure CLECs have uninterrupted service to their customers and protect that their sensitive and expensive equipment from unauthorized personnel, the collocation rules should be clarified so that CLECs can install lockable NEBS-compliant equipment cabinets in their cageless and shared collocation space.
- 3) The Commission should adopt a minimum standard interval of no more than 45 days in which a requesting carrier must be allowed to physically collocate, via caged or cageless collocation, at a particular ILEC's premises where such space is available. The Commission's rule should preempt provisioning intervals in existing interconnection agreements so that all carriers, including those CLECs with agreements containing lengthier provisioning intervals, may benefit from the rule change.
- 4) The Commission should mandate -- pending the state commission price proceedings on cageless collocation space that can be trued-up later -- that cageless collocation should cost a set percentage less (*e.g.*, 20%) than caged collocation space due to the reduced cost to the ILEC to condition such space.
- 5) The Commission should adopt specific procedures that the ILECs must follow in implementing any revisions to the collocation rules -- *e.g.*, the FCC could require ILECs to submit proposed amendments to their interconnection agreements to the state commissions for approval incorporating the FCC's revised collocation rules. The Commission should also consider subjecting any disagreements that arise in implementing these rule revisions to a quick dispute resolution procedure.

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Rulemaking, FCC 98-48 (rel. March 31, 1999) ("*Collocation Order*"), *recon. pending*, see *In re Deployment of Wireline Services Offering Advanced Telecommunications Services: Sprint Corporation's Petition for Partial Reconsideration and/or Clarification*, CC Docket No. 98-147 (filed 6/1/99).

II. Overview of the Company:

- BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc. (“PNC”) is a cutting-edge competitive local exchange carrier (“CLEC”) that is in the process of deploying facilities throughout the United States that will enable customers to purchase xDSL and other advanced telecommunications services.²
- PNC also provides resold and facilities-based local exchange telecommunications services, including residential and business local exchange telephone services, resold intrastate and interstate interexchange services, and international telecommunications services.
- PNC has taken an active role in advising the Commission on problems faced by facilities-based CLECs when attempting to collocate facilities in incumbent local exchange carriers’ (“ILECs”) premises. PNC met with the Commission Staff to discuss collocation issues on August 3, 1999 and submitted *ex parte* comments with the Commission in this proceeding on December 21, 1999 and February 18, 2000.

III. Recommended Changes to the Commission’s Collocation Rules:

1. The Commission’s Rules Should Be Clarified To Permit CLECs to Cross-Connect to Other Collocated Carriers at the ILECs’ Main Distribution Frames (“MDFs”)

- PNC believes that the Commission should amend its rules, 47 C.F.R. § 51.323(h), to permit CLECs to cross-connect to other collocated carriers at the ILECs’ MDFs.
- Under the Commission’s current rules, ILECs must permit a collocating telecommunications carrier to interconnect its network with that of another carrier at the ILEC’s premises, and the collocating telecommunications carrier may construct its own connection between the carrier’s equipment and that of one or more collocating carriers.
- However, these rules do not specify at what location and in what manner the CLEC may cross-connect to the other collocated carriers.
- Presently, ILECs, such as SWBT, do not permit CLECs to cross-connect to other collocated carriers at the MDFs. Rather, SWBT requires CLECs to install expensive and time-consuming conduits connecting their facilities to that of other collocated carriers.
- These conduits take up to 90 days to install, and if a CLEC wishes to interconnect with multiple carriers in the same central office, the CLEC would be forced to install separate conduits to each connecting carrier – a very expensive and time consuming option.

² PNC is a facilities-based CLEC authorized to provide local exchange and/or intrastate interexchange telecommunications services in Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, New York, North Carolina, Oklahoma, Tennessee, and Wisconsin.

- Allowing CLECs to cross-connect to other carriers at the ILECs' MDFs would not raise any additional security concerns and is technically feasible.

2. The Commission Should Amend its Rules to Permit CLECs to Install Lockable Equipment Cabinets in Cageless and Shared Collocation Space

- In order to ensure uninterrupted service to its customers and protect their sensitive and expensive equipment from unauthorized personnel, the collocation rules should be clarified so that CLECs can install lockable NEBS-compliant equipment cabinets in their cageless and shared collocation space.
- Both BellSouth (in Tennessee and Kentucky) and Ameritech (in Illinois) have refused PNC's requests to install lockable NEBS-compliant equipment cabinets in cageless collocation space.
- In some instances, Ameritech's tactics have precluded PNC from collocating its equipment altogether – *e.g.*, Ameritech has claimed that no caged collocation space is available in a central office while refusing to allow PNC to install lockable equipment cabinets in cageless space. Therefore, the only undesirable option available to PNC would be to leave its critical equipment unprotected.
- Under PNC's proposal, 47 C.F.R. §§ 51.323(k)(1) and (2) would be amended to permit CLECs to install equipment in lockable NEBS-complaint equipment cabinets that fit within their leased cageless or shared collocation space.

3. The Commission Should Adopt a National 45 Day Provisioning Interval for Delivery of Caged or Cageless Collocation Space

- The Commission should adopt a minimum standard interval of no more than 45 days in which a requesting carrier must be allowed to physically collocate, via caged or cageless collocation, at a particular ILEC's premises where such space is available.³
- In those rare cases where power is not available at the rack, the ILEC should be given no longer than 90 days to provision such space for collocation because power can be easily extended from another location in the central office.⁴
- In adopting the 45 day provisioning interval, the Commission's rule should preempt provisioning intervals in existing interconnection agreements so that all carriers, including CLECs with agreements containing 180 day provisioning intervals, may benefit from the rule change.

³ In addition, an ILEC should provide an estimated provisioning delivery date for collocation space when it responds to a CLEC's application for such space.

⁴ Moreover, the ILECs should not be allowed to lengthen these provisioning intervals by including extra time needed to acquire construction permits for such space. If permits are necessary, the ILECs should acquire them during the provisioning interval.

4. Pricing of Cageless Collocation

- The Commission should mandate -- pending the state commission price proceedings on cageless collocation space that can be trued-up later -- that cageless collocation should cost a set percentage less (*e.g.*, 20%) than caged collocation space due to the reduced cost to the ILEC to condition such space.
- SWBT and Ameritech appear to be charging CLECs the same price for caged collocation as cageless collocation. These cageless collocation prices do not reflect the actual ILECs' space provisioning costs but are a reflection of the ILECs' monopoly power.
- In order to ensure that CLECs reap the benefits of cageless collocation, the Commission should adopt an interim order mandating that ILECs offer a flat-rate discount to CLECs for cageless collocation space versus caged space. This reduced rate could be trued-up to the actual cost of cageless collocation once the states have established these prices.

5. The Commission Should Adopt Strict Procedures for ILEC Implementation of Revisions to the Collocation Rules

- After the Commission issued the *Collocation Order*, CLECs faced numerous delays in implementing the revised collocation rules because of the approaches taken by some ILECs in adopting these requirements.
- SWBT required PNC to adopt an amendment to its interconnection agreement with SWBT to include cageless and shared collocation options. However, SWBT used this opportunity to amend other previously agreed upon items in the agreement that it no longer found favorable -- *e.g.*, SWBT attempted to lengthen the collocation provisioning interval from 90 to 180 days and eliminate a liquidated damages provision for its failure to meeting the provisioning timelines.
- If a CLEC refused to accept SWBT's other changes, it could not receive either cageless or shared collocation space. The end result is that PNC faced lengthy delays in acquiring cageless collocation space.
- Therefore, the Commission should adopt specific procedures that the ILECs must follow in implementing any revisions to the collocation rules -- *e.g.*, the FCC could require ILECs to submit proposed amendments to their interconnection agreements to the state commissions for approval incorporating the FCC's revised collocation rules. The Commission should also consider subjecting any disagreements that arise in implementing these rule revisions to a quick dispute resolution procedure.